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April 8, 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

A. Richard Metzger, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Re: *Clarification of the Commission's Rules on Interconnection Between LECs and  
Paging Carriers, CCB/CPD 97-24 ("SWBT Clarification Request")*

*Implementation of the Local Competition Provisions of the Telecommunications  
Act of 1996; First Report and Order, CC Docket Nos. 96-98, 95-185  
("Interconnection Reconsideration Order")*

*Formal Complaints of AirTouch Paging against GTE, File Nos. E-98-08, E-98-10*

*Formal Complaints of Metrocall, Inc. against Various LECs, File Nos. E-98-14-18*

Dear Mr. Metzger:

The Personal Communications Industry Association ("PCIA") is hereby responding substantively to the letter to you dated March 19, 1998 from Michael K. Kellogg on behalf of Southwestern Bell Telephone, Pacific Bell and Nevada Bell (collectively the "SBC LECs") pertaining to LEC paging interconnection.

As is demonstrated by the attached response, the proposal contained in the SBC Letter does not provide an appropriate basis for resolving the SBC LECs' stay request.

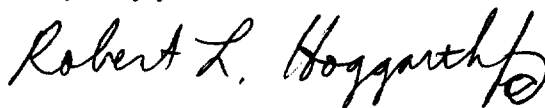
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Kindly refer any questions in connection with this matter to the undersigned.

Very truly yours,

A handwritten signature in black ink, reading "Robert L. Hoggarth" with a stylized flourish at the end.

Robert L. Hoggarth, Esquire  
Senior Vice President -  
Paging and Narrowband

Angela E. Giancarlo, Esquire  
Government Relations Manager

Attachment

cc: Magalie Roman Salas  
Dan Phythyon  
Rosalind K. Allen  
Jeanine Poltronieri  
Suzanne Tetreault  
Ed Krachmer  
Tamara Preiss  
Dan Grosh  
David Kreech  
Tejal Mehta

**The text of the March 19, 1998 letter from Michael K. Kellogg to A. Richard Metzger regarding LEC-CMRS interconnection is reproduced here in regular typeface. Annotations in bold reflect the response of the Personal Communications Industry Association:**

Dear Mr. Metzger:

As you know, considerable disagreement has arisen among various industry participants concerning the implications of your December 30, 1997 letter, setting forth the Bureau's interpretation of the application of Section 51.703(b) of the Commission's rules to interconnection between paging service providers and local exchange carriers.

**PCIA Response: The only reason there remains any disagreement concerning Section 51.703(b) is that some LECs resolutely refuse to abide by explicit Commission and Court rulings. Paragraph 1042 of the Commission's Local Competition First Report indicated that LECs were obligated immediately to cease charging all CMRS carriers for the delivery of local LEC-originated traffic. This obligation was clearly embodied in the text of Section 51.703(b) of the rules. The obligation was confirmed by Common Carrier Bureau Chief Regina Keeney by letter dated March 3, 1997. The rule section later was upheld by the 8th Circuit as applied to LEC/CMRS interconnection. The obligation was confirmed again (in response to a "clarification" request filed by the SBC LECs) by Common Carrier Bureau Chief A. Richard Metzger in a letter dated December 30, 1997 (the Metzger Letter). As long as the Commission allows the LECs to disregard these rulings with impunity, they will continue to foster disagreement.**

I am writing to suggest a clarification of your letter that I believe would resolve many of these disputes.

**PCIA Response: Section 51.703(b) of the rules has already been the subject of two Bureau Letter clarifications, one Court ruling and remains under scrutiny pursuant to multiple petitions for reconsideration, applications for review and requests for stay arising out of either the Local Competition First Report or the Metzger Letter. It is disruptive for the SBC LECs to seek yet another clarification at the Bureau level while simultaneously seeking review of the Metzger Letter by the full Commission. Multiple agency proceedings in which related issues are being separately considered by different agency personnel contribute to the seemingly eternal life of this proceeding.**

**The claim that a new and revised ruling along the lines now suggested by the SBC LECs would "resolve disputes" is mistaken. Such a ruling would represent a complete abandonment by the Commission of the sound principles reflected in the Local Competition First Report, and the paging industry would have no choice but to follow the same course of agency and judicial review that the LECs have pursued.**

The Bureau has interpreted Section 51.703(b) to mean that a LEC may not charge a paging carrier for dedicated facilities used to deliver local telecommunications traffic generated on the LEC's network to the paging carrier's terminal. For reasons we have explained in detail elsewhere, we believe that the Bureau has misinterpreted Section 51.703(b) and that the Commission should correct that misinterpretation.<sup>1/</sup> [Footnote 1] - In particular, SBC maintains that Section 51.703(b) of the Commission's rules is effective only in the context of negotiation and arbitration of interconnection agreements pursuant to section 252 of the Act. [End Footnote 1]

**PCIA Response: The Local Competition First Report explicitly ruled that the relief from facility charges associated with local LEC-originated traffic was to come into being "as of the effective date of this Order" (i.e. September 30, 1996). The plain language of Section 51.703(b) does not limit this relief from facility charges only to carriers that seek interconnection under Section 251/252. Furthermore, Section 51.703(b) of the rules ultimately was upheld by the Eighth Circuit pursuant to the Commission's authority under Section 332 of the Act, not under Sections 251 and 252. There is, therefore, no legal basis for the contention that Section 51.703(b) is effective only in the context of the negotiation and arbitration provisions of Section 252.**

At the very least, however, the Bureau itself should make clear what its letter did not say.

**PCIA Response: The SBC LECs' attempt to construe the Metzger Letter as leaving the door open to the interpretation they now seek is improper. As is discussed in greater detail below, the SBC LECs want to severely and unlawfully limit the relief from facility charges that paging carriers receive. There is no language in any of the prior rulings that remotely suggests that this was what the Commission intended. The Bureau properly concluded before that the prior "clarification" sought by the SBC LECs was in fact a request for reconsideration. The Bureau must reach the same conclusion with respect to this latest "clarification" request.**

Nothing in the Commission's rules or the Local Competition Order requires a LEC to use any particular type of facility to transport traffic originated on its network to a paging carrier's terminal.

**PCIA Response: A LEC does indeed have a legitimate right to participate in the determination of the type of facilities to be used to**

**interconnect its network with the paging carrier's network. This right must, however, be exercised responsibly in the context of the co-carrier relationship. Similarly, paging carriers must act responsibly and not request unnecessary facilities for which LECs must bear the cost. (PCIA is, however, unaware of any instance in which paging carriers have sought to "gold plate" their systems in this manner.) In a properly managed co-carrier environment, a LEC cannot refuse to provide interconnection reasonably requested by a paging carrier, nor can it unilaterally reconfigure existing arrangements in a manner that would disrupt service to the public. The correct balance is for the co-carriers to negotiate in good faith to agree upon an efficient network configuration that provides an acceptable grade of service (P .01) based upon reasonably projected demand. Ultimately, the objective in every case should be to create technically efficient interconnection without imposing unfair economic inefficiencies on either party. In many cases, this will mean a continuation of existing arrangements. In some cases, new interconnection arrangements where traffic is carried over shared facilities may be more appropriate.**

Indeed, the logic of the Local Competition Order, as well as the Bureau's December 30 letter, indicates that a LEC must attempt to recover the network costs associated with transport of traffic originated on a LEC's network to a paging carrier's terminal from the LEC's local exchange customers.

**PCIA Comment: PCIA agrees. The calling party ( in this instance, the LEC landline customer), who clearly enjoys a benefit from the completion of the page he or she initiates, should bear the costs associated with delivering the call to the point of interface ("POI") with the terminating carrier (in this case, the paging service provider).**

LECs are therefore free to implement rating points for paging numbers in a way that permits this cost recovery.

**PCIA Response: This sentence fails to make clear the basis on which the SBC LECs propose to assess such charges. If LECs intend to discriminate against paging service providers and paging customers by imposing a surcharge on calls to paging devices that would not apply to calls going to other telecommunications carriers for local termination, PCIA and its members would object strenuously. LECs are not permitted to discriminate against paging carriers in this fashion.**

One implication of this is that if a paging carrier wishes to receive traffic originated throughout a LATA at a single paging terminal in that LATA, any calls received from local exchange areas other than the one in which its paging terminal is located may be rated by the LEC as intraLATA toll calls. In other words, any time a call originated on the LEC's network travels over the LEC's network from a distant local exchange area to

the local exchange area where the paging terminal is located, the LEC is permitted to recover intraLATA toll charges from the caller.

**PCIA Response:** PCIA disagrees. In other contexts, the LEC's facility costs associated with the delivery of LEC-originated traffic to another carrier for local termination is included in the LEC's general rate base. Here, too, the proper method to reimburse the LEC for its cost to deliver traffic to wireless carriers for local termination is through its fixed monthly standard local access telephone charge.

If paging carriers wish to offer local calling in multiple local exchange areas served by a single terminal, therefore, they must compensate the LECs for these arrangements.

**PCIA Response:** This sentence directly contradicts the prior recognition by the SBC LECs that the calling party, not the called party, should bear the costs of delivering the page to the terminating carrier. Also, this sentence suggests that paging carriers would enjoy relief from facility charges only if they install a dedicated switch in each exchange area. Such a requirement would be wasteful and discriminatory. It would be wasteful because unless and until the number of paging customers in a particular exchange area grows to a certain level, it is more cost efficient for both the LEC and the paging service provider if the paging carrier establishes a virtual presence via an FX line rather than by installing a dedicated switch. After all, if the LEC forces the paging company to install a switch on grounds of economic efficiency, then the paging carrier would be entitled to compensation for the switching and termination functions performed by that switch. This option would cost the LEC more in the long run than would providing the FX line.

It would be discriminatory because LECs are not forcing CLECs or two-way CMRS carriers to put dedicated switches in every exchange area these carriers serve. LECs may not discriminate against paging carriers by unilaterally imposing such a requirement on them.

One such arrangement is reverse billing, where the paging carrier pays the intraLATA toll charges incurred by callers to its paging terminal.

**PCIA Response:** The reference to reverse billing arrangements as a possible means to provide efficient MTA-wide call termination is curious in light of recurring reports that certain LECs, including the SBC LECs, are in the process of withdrawing this option from their offerings. See, e.g. Michigan Bell Telephone Company (Ameritech), Tariff M.P.S.C. No. 20R, Part 14: Wireless Services; Part 6: Public Mobile Carrier Services; Revisions filed October 1, 1997.

Another such arrangement is the provision of "FX"-type facilities, dedicated lines used to transport traffic from a distant local exchange area to a paging carrier's distant terminal.

If a paging carrier chooses to make use of such services and facilities, nothing in the Commission's rules, the Local Competition Order, or the Bureau's letter prevents LECs from charging for them.

**PCIA Response:** In truth, nothing in the Commission's rules, orders or the December 30, 1997 Metzger Letter provides any basis to conclude that the LECs can charge for intra-MTA FX facilities. The Bureau has confirmed that LEC-originated traffic is to be delivered to paging carriers for local termination without charge and that the MTA defines the scope of "local" termination. The clarification the SBC LECs seek, which would limit the paging carriers' relief to one local exchange area, has no basis in the Commission's Local Competition First Report or the rules the Commission adopted.

Notably, the SBC LECs fail to mention the most obvious means of facilitating the cost efficient delivery of traffic by the LEC throughout the MTA. By offering a paging carrier tandem interconnection with an option to have numbers rated out of different end offices which subtend the tandem, the LECs could deliver most of their traffic throughout the MTA using their own shared facilities rather than forcing paging companies to acquire dedicated facilities.

If rating and routing is separated in this fashion -- as already is done by certain LECs -- some paging companies may likely consider limiting the LECs' obligation to deliver traffic without charge to a single POI within a confined area (e.g. the LATA, the tandem serving area, a fixed mileage distance from the location of the greatest traffic density, etc.) The result would be a more balanced approach than limiting the paging carrier to receiving traffic in a single exchange in the MTA as suggested by SBC. Ultimately, however, this approach is best implemented by agreement of the parties rather than by regulatory fiat.

Certainly, the Bureau's letter should not be used to justify a paging carrier in ordering FX-type facilities out of existing State tariffs and then refusing to pay for them.

**PCIA Response:** The SBC LECs err in asserting that FX lines provided within the MTA for local termination should continue to be governed by state tariffs that conflict with federal law. The LECs were obligated to modify their state tariffs to bring them into conformity with Section 51.703(b) of the FCC rules when the Local Competition First Report was adopted and upheld as to LEC/CMRS interconnection by the 8th Circuit. To the extent that LECs seek to enforce pre-existing tariff provisions that conflict with Section 51.703(b), they clearly are preempted from doing so by the Supremacy Clause of the Constitution and Section 332 of the Communications Act.

If LECs were prevented from recovering these costs, they would have to attempt to recover the intraLATA toll charges incurred by callers to a distant paging carrier's facilities from local exchange customers generally; such an arrangement would encourage inefficient calling patterns. Again, nothing in the Commission's rules or in the Local Competition Order mandates this result.

**PCIA Response:** As noted above, it is the LEC position that would foster inefficiency by forcing paging carriers to install unnecessary switches as a condition of relief from facility charges. They are entitled to that relief without having to meet this condition.

If the Bureau issued a clarification along these lines, SBC would be willing to withdraw its Petition for Stay of the Bureau's Letter of December 30.

**PCIA Response:** As has been ably demonstrated in the opposition PCIA filed to the SBC LECs' Stay Request, this request is totally without merit and cannot be granted. In effect, the SBC LECs are offering to relinquish a losing position in exchange for a ruling that would completely undermine the Commission's carefully considered rulings on the facilities charges issue. The Commission should not be enticed by this offer.

Again, SBC believes that the Bureau's interpretation of Section 51.703(b) was incorrect, and SBC will continue to pursue expeditious review of that interpretation. However, a clarification along the lines described above would ease the pressure on SBC to reconfigure its network and therefore render the stay unnecessary.

**PCIA Response:** Once again, SBC is threatening unilateral reconfiguration of existing networks to the detriment of the public. This unnecessary act would show complete contempt for the common carrier obligations of the SBC LECs, including their ongoing paramount duty to meet and serve the public interest.

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